is still held to be acting in the line of his duty to the master, even though he actually quits work to obtain a drink of water. *Jarvis* v. *Hitch,* 161 Ind. 217, 65 N. E. 608; *Birmingham Rolling Mill Co.* v. *Rockhold,* 143 Ala. 115, 42 So. 96. Such acts are said to be what the parties may be reasonably held to have considered necessary to the discharge of the duties of almost any kind of manual labor. In *Vennen* v. *New Dells Lumber Co.,* supra the employer was held liable for the death of an employee of typhoid fever, due to impurities in the water furnished by the employer, the court saying that the death had resulted from an injury "growing out of and incidental to his employment." Care must be taken to distinguish between an accidental injury, arising as did the injury in the principal case, and occupational diseases, at least in those jurisdictions where the latter are not held to warrant recovery under the Compensation Acts. The distinction is made clear in the case of *Bacon* v. *Mutual Accident Association,* 123 N. Y. 304, 25 N. E. 399.

WORKMEN'S COMPENSATION—OCCUPATIONAL DISEASE.—Defendant was employed by a white-lead manufacturer, and while thus employed contracted lead poisoning and was disabled from work. He made application in due form for compensation under the WORKMEN'S COMPENSATION LAW (102 Ohio Laws, 524), but the Industrial Commission disallowed the claim. The county court reversed this ruling, the Court of Appeals affirmed its decision, and the employer and the Commission appealed to the Supreme Court. The statute provides for recoveries for "personal injuries sustained in the course of employment." *Held,* that the statute does not cover injury or death resulting from disease contracted in the course of such employment. *Industrial Commission of Ohio* v. *Brown* (Ohio, 1915), 110 N. E. 744.

When the word "accident" appears in the statute, there does not seem to be any doubt that occupational diseases are not included. The distinction between accident and disease has always been recognized. In England in the case of *Steele* v. *Cammell Laird Co.* [1905], 2 K. B. 232, it was held that the statute providing for recovery for personal injury arising from accident did not include diseases resulting from the nature of the work itself. Later a statute (6 Edw. VIII, c. 58) specifically provided for such recovery. The difference of opinion arises when the term "accident" does not appear in the statute, and recovery is to be allowed for all personal injuries "arising out of, or sustained in the course of, the employment." Massachusetts has held that such a statute does include occupational diseases. *In re Hurle,* 217 Mass. 223, 104 N. E. 336, and *Johnson* v. *London Guarantee & Accident Co.,* 217 Mass. 388, 104 N. E. 735. Such has been the holding in the Court of Appeals in New Jersey (*Hichens* v. *Magnus Metal Co.,* 35 N. J. Law Journal), but the question has never been decided by the court of last resort. On the other hand, under practically the same statute, Michigan holds that the term "personal injuries" does not include occupational diseases. *Adams* v. *Acme White Lead and Color Works,* 182 Mich. 157, 148 N. W. 485. The court in this case notices the Massachusetts cases, but declines to follow them. For a review of the statutes in the dif-

ferent states, see BRADBURY, WORKMEN'S COMPENSATION, 342–360. The principal case changes the former rule in Ohio in so far as it had been decided, by the Superior Court, in *Plasko* v. *American Carriage Co.*, 15 N. P. (N. S.) 273, 4 N. C. C. A. 843.

WORKMEN'S COMPENSATION—STATE AND FEDERAL ACTS.—A was employed as a laborer by B, a carrier doing intra- and inter-state business. While tamping ties A was struck in the right eye by a stone which came from the ground. There was no negligence on the part of B. The New York Workmen's Compensation Commission awarded A compensation. B contends that as it was doing inter-state business the Federal Employer's Liability Act applied and that A could not recover because negligence on the part of the employer was a necessary element. *Held,* that the state law and not the federal law applies, on the theory that the injury came within a class to which the Federal Employer's Liability Act was not meant to apply. *Winfield* v. *N. Y., C. & H. R. R. Co.*, (N. Y. 1915) 110 N. E. 614.

Congress passed an Employer's Liability Act in 1908 applicable to inter-state carriers, providing they shall be liable in damages to any employee suffering injury while employed by such carrier in such commerce, due to the negligence of any of its officers, agents or employees, etc. It will be noticed that negligence is a necessary element to the right of recovery by an employee. The New York Compensation Act, under which recovery was had in the principal case, allows recovery even where there is no negligence. The court recognized the principle that once Congress has acted in a field over which it has the power to act, all prior state action is superseded. *Smith* v. *Alabama*, 124 U. S. 473; *Erie R. R. Co.* v. *N. Y.*, 233 U. S. 671, 52 L. R. A. (N. S.) 266. The decision is rested upon a rather novel ground, that is, that the act of Congress in question having provided for a recovery only in those cases where the carrier is negligent, by necessary implication, Congress did not intend the act to apply to any case in which the carrier was not negligent From this the court reasoned that Congress had not legislated upon this particular sphere and as the state had done so, recovery could be had under the state law. It would certainly seem that the implication arising from the failure of Congress to allow a recovery where no negligence was shown would be very strong to the effect that Congress intended that no recovery should be had in such cases. In justification of the decision it may be said that where the health and safety of citizens of the state are involved, any Federal statute will not be held to supersede a state law covering the same field unless it clearly appears that the two are inconsistent. *Missouri, K. & T. R. R.* v. *Haber*, 169 U. S. 613; *Reid* v. *Colo.*, 187 U. S. 137. The decision might have been placed upon the ground that the Federal Liability Act did not apply, since the defendant had been doing both intra- and inter-state business and since the facts did not show that the plaintiff A was employed in inter-state commerce as required by the Federal Liability Act, but showed rather that he was doing a class of work that applied to either.